EX PARTE OR LATE FILED

RECEIVED

NOV 25 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

altv
ASSOCIATION OF LOCAL TELEVISION STATIONS

DOCKET FILE COPY ORIGINAL

November 25, 1997

The Honorable William Kennard
Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: Written Ex Parte Letter
Advanced Television Systems
MM Docket No. 87-268

Dear Mr. Chairman:

Over the past few months many of ALTV's UHF members have expressed concern about the disparity in DTV power that appears in the proposed DTV table of allotments. This disparity could have significant competitive consequences for these stations and even impair the transition to digital television. American consumers are unlikely to purchase new digital television sets if many of their favorite UHF stations are unable to transmit sufficiently strong signals in the digital world.

In an effort to help remedy this problem, ALTV herewith files the attached proposal to help resolve this issue. At its core, the proposal would permit DTV stations to increase power to one megawatt, provided tilt beam antennas and/or other technologies are employed to prevent any incremental visible interference. Significantly, the proposal will not result in any increased interference above those levels that would exist under any DTV channel plan the FCC ultimately adopts. Moreover, it does not propose changes in channel assignments. Finally, it proposes a fair and expedited process for resolving interference disputes.

This is not a new proposal. The concept was presented to the FCC by the Broadcaster's Caucus in its reply comments as one element in an overall plan to address the UHF-DTV power problem. *See Sixth Report and Order* in MM Docket No. 87-268, FCC-97-115, (released April 21, 1997) at *para.*22.

No. of Copies rec'd 0+1

1320 19th Street, NW, Suite 300 • Washington, DC 20036 • tel 202.887.1970 • fax 202.887.0950

ALTV trusts you will consider this proposal as one way to help resolve the UHF-DTV power issue. It is not intended to be a substitute for maximization. Rather, it is a plan to permit power increases without changing the protected contours contained in whatever FCC channel plan that is ultimately adopted.

If you have any questions, we would be happy to meet with you or our staff to discuss the matter.

Sincerely,

James B. Hedlund
President

cc The Honorable Susan Ness
The Honorable Michael Powell
The Honorable Gloria Tristani
The Honorable Harold Furchtgott-Roth
Mr. Richard Smith
Mr. Roy Stewart
Mr. Bruce Franca

UHF DTV Power: A Proposal to Help Resolve the Issue

I. Addressing the Power Disparity Problem

Note: The proposal outlined in subsection "I. B" below is different from the maximization principle contained in the FCC's *final Report & Order in this proceeding*. Nothing in this proposal will affect a station's ability to increase its power consistent with the FCC's maximization principles or any interim maximization proposal adopted by the FCC. The maximization concept is designed to increase a station's overall coverage area. The proposal outlined in subsection "I. B" below is designed to address those situations where a station is not expanding its overall coverage area, but desires to increase its signal strength within its protected contour without increasing the field strength at the protected contour. Stations using the FCC's maximization process may also utilize the procedures outlined below. Similarly, stations using tilt beam procedures outlined below may also use the maximization procedures acknowledged by the FCC. Accordingly, stations increasing power may employ one or both of the following options

A. Maximization: Expanding the Coverage Area of the Assigned Protected Contour

Stations expanding the coverage area of their protected contour have the option to do so by raising their power levels or employing any other means consistent with the maximization principles and procedures outlined by the FCC.

B. Increasing Signal Strength Without Changing the Coverage Area of the Assigned Protected Contour

Stations increasing their signal strength but not increasing the coverage area of their protected contour may operate at a maximum of 1 megawatt, provided tilt beam antennas and any other technologies are employed consistent with the following requirements.

1. Field Strengths At the Protected Contour

The field strengths at the outer edge of a DTV station's protected contour may not exceed the level that would have existed if the station was operating at the power assigned to it pursuant to the FCC's *final Report and Order*. DTV stations operating at power levels higher than those originally assigned to them shall employ tilt beam antennas or any other means to insure that the

field strengths at the outer edge of their original protected contour do not increase above these original levels. Stations exceeding these field strengths shall take immediate corrective action consistent with the procedure outlined below.

2. Within the Protected Contour

A station increasing its power shall also be responsible for limiting additional interference within its protected contour. A station operating at such higher power levels will be responsible for limiting adjacent channel, RF and taboo interference to those visible levels that would have existed if the station was operating at the power levels originally assigned to it under the FCC's *final Report and Order*. Such stations shall employ any means necessary to prevent such additional, incremental visible interference.

3. Overall Digital Noise

Notwithstanding these obligations, stations operating in the UHF band in a market shall be responsible for resolving problems, if any, that may result from raising the total digital noise floor in a market. In most cases the solutions may vary from market to market. Stations shall agree to work with each other and the FCC to resolve any problems in a fair manner. In resolving this problem, stations shall be responsible for their proportionate share of the overall digital noise problem.

4. Incremental Visible Interference

In resolving these issues, a station's service to its local DMA shall take precedence. A station will not be prevented from increasing its power and employing tilt beam or other technology where the "incremental visible interference" caused to the complaining station falls outside the complaining station's DMA. Alternatively, even where it does employ tilt beam technology, a station may not increase its power if it will result in "incremental visible interference" to a complaining station within the complaining station's DMA.

For the purposes of these evaluations "incremental visible interference" is that level of interference above and beyond that which would have existed had the station been operating at the assigned effective radiated power contained in the FCC's *final Report and Order*. In a strict sense, facilities operating according to the FCC's current table will lead to some additional interference. Stations employing tilt beam and other technology will be responsible only for the "additional incremental visible levels of interference" that are above and beyond those that already would have existed had the stations been operating at their originally assigned DTV power levels.

II. Procedure

Note: The following procedures will apply to those stations under subsection "I. B" employing tilt beam and other technologies that increase power without expanding the coverage area of the station's protected contour. Stations employing the maximization principles established by the FCC shall follow the procedures set forth by the Commission.

A. Initial Filing: One Megawatt Presumption

1. Engineering Studies Required

All DTV stations shall be permitted to commence operations at a maximum of 1 megawatt. A station desiring to operate at a power level higher than originally assigned to it under the *final Report and Order* shall file, with its initial application for a DTV construction permit or subsequent application to modify its DTV facilities, an engineering analysis demonstrating that the predicted field strengths and predicted "within market" interference levels comport with the requirements outlined in subsection "I.B" above.

Upon receiving program test authority from the FCC, the station must conduct actual field strength and interference tests to make sure performance comports with the initial engineering analysis. Such tests shall be conducted by a registered, professional engineering firm and the results filed with the FCC. The FCC shall establish standards and applicable testing methodologies for such field tests.

2. Notification to Increase Power

A station deciding to operate at power levels above those assigned to it by the FCC pursuant to subsection "I.B," shall notify, by certified mail, all affected stations (both within and outside its market) at the time the station files either its construction permit or modification application with the FCC.

B. Accelerated Dispute Resolution for Stations Operating Under Subsection "I. B"

1. Complaints

The FCC shall be the ultimate arbiter of all interference complaints. Consistent with the standards outlined above, an aggrieved station may file a complaint against a station that has commenced operations with increased power where: 1) the field strength present at the DTV station's protected contour exceeds the field strength that otherwise would have existed had the DTV station been operating at the power originally assigned to it under the FCC's *final Report & Order; 2)* "additional incremental visible interference" is received within the aggrieved station's

local DMA. In this case, the complaining party must demonstrate that the visible interference it now receives exceeds the level of interference that would have existed had the DTV station operated at the power level assigned to it in the FCC's *final Report & Order*.

2. Engineering Studies Required and Must Be Served on the Station

In either instance, the aggrieved station must present actual field strength measurements taken by a registered professional engineering firm. The FCC shall establish standards and applicable testing methodologies for such field tests. The complaint, together with the field engineering data, must first be served on the DTV station that has increased its power. This notification will be a condition precedent to ultimate FCC action.

3. Immediate Power Reduction Pending Dispute Resolution

Upon receipt of an engineering report from a complaining station's registered professional engineering firm, the interfering DTV station shall immediately (within 48 hours) reduce its power, employ technical means to immediately eliminate the additional interference or otherwise resolve the problem to the complaining station's engineering firm's satisfaction. Stations are obligated to use their best efforts to mutually resolve such disputes.

4. Appointment of an Engineering Arbitrator

If the dispute is not mutually resolved, then the stations shall mutually agree upon the selection of a third, independent engineering arbitrator to analyze field strengths and/or interference levels. The engineering arbitrator shall be selected no later than 20 days after receipt of the aggrieved station's engineering complaint. The engineering arbitrator shall be authorized by the parties to issue temporary injunctive relief including: 1) the continuation or elimination of the DTV station's corrective measures pending final FCC resolution and 2) such other temporary relief as may be deemed necessary and appropriate.

If resolution cannot be achieved by the engineering arbitrator, then either party may file a petition with the FCC. The arbitrator's decision will be given presumptive weight in any subsequent FCC action or proceeding. Final FCC action shall take place within 60 days of receiving a complaint and an arbitrators decision.